

BEVERLY J. HAYES

IBLA 71-117

Decided December 6, 1972

Appeal from the Alaska State Office, Bureau of Land Management, decision denying a petition to reinstate headquarters site purchase application A-061990.

Set aside and remanded.

Alaska: Headquarters Sites -- Equitable Adjudication: Generally --
and Reservations: Generally

Withdrawals

Equitable adjudication may be invoked to permit consideration and reinstatement of a headquarters site purchase application where a survey deposit was not paid within the time required, but substantial compliance of the law otherwise has been alleged, and the claim was initiated before the land was withdrawn by Public Land Order No. 4582.

APPEARANCES: Beverly J. Hayes, pro se.

OPINION BY MRS. THOMPSON

This appeal by Beverly J. Hayes is from a decision of the Alaska State Office, Bureau of Land Management, dated November 12, 1970, denying her application to reinstate her application to purchase a headquarters site claim.

Mrs. Hayes first filed her application to purchase the claim on February 17, 1965. On its face the application showed substantial improvements on the claim and that the applicant was qualified to purchase the site as a headquarters site in accordance with 43 U.S.C. 687a (1970). However, by a decision of February 3, 1967, the State Office held the application for rejection unless Mrs. Hayes remitted the estimated cost of surveying the claim, \$ 800, within 90 days. That decision was modified by a decision of May 17, 1967, retracting the 90-day payment requirement and allowing her to submit a new application to purchase the claim and to pay the survey deposit within the five-year term of the entry ending November 22, 1969. She failed to file a new application and the deposit within that time. Therefore, the State Office refused to grant her application for reinstatement for the reason the claim had expired and the

land was no longer subject to location because of a withdrawal by Public Land Order No. 4582, dated January 7, 1969.

In her appeal appellant requests that equitable relief be afforded and that she be allowed to purchase her claim to preserve her improvements and the site which she and her husband need in their business. Applications to purchase headquarters site claims should be filed within the five-year period following a notice of settlement or occupancy as provided by 43 U.S.C. § 687a (1970), and the survey deposit should have been paid within that time as directed by the State Office. However, under certain circumstances where there has been substantial compliance with the law, claims where there are late-filed applications, proofs, and payments may be allowed to go to patent under the equitable adjudication authority set forth in 43 U.S.C. §§ 1161-1164 (1970) and 43 CFR Part 1870.

The State Office did not transmit this case to the Director of the Bureau for equitable adjudication presumably because the land was withdrawn by Public Land Order No. 4582. That withdrawal was not a bar to equitable adjudication relief, however. This Board has concluded that Public Land Order No. 4582, as modified by subsequent orders, as well as the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, does not prohibit the acceptance of proofs and applications filed after required statutory time periods where a claim was initiated before the original withdrawal of the land. See Alvin R. Aspelund, 7 IBLA 165 (1972); Herbert W. Simms, 7 IBLA 51 (1972); Elizabeth Hickethier, 6 IBLA 306 (1972); C. Rick Houston, 5 IBLA 71 (1972); Juanita J. Anderson, 4 IBLA 170 (1971). The reasons stated in these cases are appropriate here to the delay in paying the survey deposit. Also applicable is the case, Lizzie Anthony, 17 L.D. 141 (1893), recommending equitable adjudication for acceptance of a statutorily required payment for a desert land entry after the life of the entry expired where substantial compliance with the law was otherwise made. Therefore, this case may appropriately be considered under the equitable adjudication authority. Of course, before any favorable action may be taken, the claimant must transmit the survey deposit to the Bureau. 1/

1/ The record shows that appellant tendered a check for \$ 800 to the State Office on or about October 30, 1970. The check was returned to her with the decision of November 12, 1970, denying her petition for reinstatement.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case is remanded to the Bureau of Land Management for appropriate action in accordance with this decision.

Joan B. Thompson, Member

We concur:

Frederick Fishman, Member

Anne Poindexter Lewis, Member.

